

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

v.

LUCAS KELLER,

Defendant.

CRIMINAL ACTION NO.
2:24cr108

TRANSCRIPT OF PROCEEDINGS
(STATUS HEARING)
(CONDUCTED VIA WEBEX)

Norfolk, Virginia

December 11, 2024

BEFORE: THE HONORABLE ELIZABETH W. HANES
United States District Judge

APPEARANCES:

UNITED STATES ATTORNEY'S OFFICE

By: Elizabeth M. Yusi
Assistant United States Attorney
Counsel for the United States

FEDERAL PUBLIC DEFENDER'S OFFICE

By: Amanda Catherine Conner
Sean Carlton Mitchell
Assistant Federal Public Defenders
Counsel for the Defendant

1 (Proceedings commenced at 3:11 p.m.)

2 THE COURT: Good afternoon, everyone. This is
3 Judge Hanes.

4 Madam Clerk, can you call our matter.

5 THE CLERK: Yes, Your Honor.

6 Case number 2:24cr108, United States of America
7 versus Lucas Keller. Counsel for the government is
8 Elizabeth Yusi, and counsel for defendant is Amanda Conner
9 and Sean Mitchell. Everybody is present and ready to
10 proceed.

11 THE COURT: All right. Thank you.

12 I do want to thank you all for your briefing. I do
13 appreciate it. It's been helpful. I did have just a couple
14 of questions that I wanted to clarify, and then based upon
15 that I think we can decide how we want to proceed.

16 What I understand is that there were a total of
17 nine requests made by the defense; that requests one and
18 eight the government has agreed with; request nine has been
19 withdrawn; and requests two, three, four, five, six, and
20 seven are challenged or disputed by the government.

21 Ms. Conner, is that still the case? Have I gotten
22 all of that right?

23 MS. CONNER: Yes, Your Honor.

24 THE COURT: All right. So, one question that I had
25 is on your request number five, which relates to any

1 communications between Probation Officer Lopez and
2 Branch-Jackson about the search of devices prior to the
3 search warrant, I think my question regarding that is, did
4 Mr. Branch-Jackson ultimately conduct some form of a search
5 subsequent to these communications?

6 MS. CONNER: I don't know, Your Honor.

7 Mr. Mitchell, do you know the answer to that for
8 sure, or is that something that we're not kind of sure
9 about?

10 MR. MITCHELL: Good afternoon, Your Honor.

11 So, on that point, it's not completely clear to the
12 defense whether Mr. Branch-Jackson ever became involved in
13 the search. I know the documents indicated that he probably
14 would, or that there was an anticipation that he would be
15 the person to perform the search, but nothing else after
16 that. So, I don't know if the defense knows the answer to
17 that question.

18 THE COURT: All right. So, as I understand each of
19 these categories, in my mind, I would break them into
20 topically three different types of categories:

21 The first of which would be information that you're
22 seeking regarding the basis for the search, in other words,
23 whether there was reasonable suspicion that a violation
24 existed;

25 Then, second, there is some challenges regarding

1 the manner of the search or the searches;

2 And then finally, potentially the merit,
3 merit-based discovery regarding either the alleged
4 violations of the supervised release violations or the new
5 charge.

6 And so, I guess I want to talk to you about that
7 with that framework in mind because -- well, let me ask you
8 this -- I mean, whether this is for Ms. Conner or
9 Mr. Mitchell -- do you understand kind of that breakdown
10 generally, and would you agree that that's consistent with
11 the requests that you've made?

12 MS. CONNER: Yes, Your Honor, I would. That sounds
13 correct.

14 THE COURT: Okay. So, let me ask, then, one
15 clarifying question. As to this first category as to
16 whether or not there was an adequate justification or
17 adequate cause for the search, it seems to me that you're
18 generally focused on the initial search conducted by
19 probation as compared to the search of the phones that was
20 executed after or pursuant to a search warrant, but in point
21 four, you do note there is some reference to the basis of
22 the search warrant. And so, are you seeking discovery
23 related to both searches, or is it somewhat limited as to
24 one or the other?

25 MS. CONNER: Your Honor, definitely seeking any

1 information related to both searches.

2 THE COURT: You said both searches, right?

3 MS. CONNER: Yes, both searches.

4 THE COURT: Okay. So, related to that, you know,
5 one of the things which the parties did not brief but which
6 to me would be relevant to that question is that there is a
7 standard that generally applies when the defense is seeking
8 discovery to challenge a search warrant.

9 And here, obviously, there wasn't a search warrant
10 authorized, but the Court through the Memorandum did
11 authorize the search requested by probation, and
12 specifically -- I know you're familiar with the *Franks*
13 *versus Delaware* case which requires the defense to make a
14 substantial preliminary showing that there was a false
15 statement that was made, that was knowing and intentional or
16 with reckless disregard for the truth that was included in
17 the affidavit. And then under that *Franks* standard, the
18 defense has to satisfy the standard in *Franks* in order to
19 obtain that type of discovery.

20 I very much appreciated the information regarding
21 the other standards that you referenced, but it seems to me
22 that -- well, specifically as it relates to the actual
23 search warrant itself, because *Franks* is then clearly on
24 point, but also as it relates to the authorization to
25 probation, so that same framework may apply. That was not

1 briefed by you all, and I guess I wanted to understand
2 whether you wanted an opportunity to address that, because
3 to me that seems like the framework, at least in part, that
4 the Court should be referencing.

5 Do you have thoughts on that?

6 MS. CONNER: Yes, Your Honor.

7 I mean, I've had a couple of matters with *Franks*
8 hearings, and maybe -- I haven't read it in a little while,
9 but my general understanding is that, yes, we have the
10 burden to kind of in order to get the hearing, and usually
11 we have to make that showing in our motion. But as far as
12 having to make a showing to get discovery, you know,
13 generally under Rule 16, we just get the discovery, and then
14 once we look at the discovery, we file a motion, and we have
15 to make a preliminary showing that there was a false
16 statement or, you know, omission that was a material
17 omission.

18 So, we didn't -- I didn't think to brief that at
19 all because we weren't really at that stage yet. We were
20 just trying to get discovery to assess whether there could
21 be a *Franks* violation or not without knowing -- you know,
22 generally, we would get that information through police
23 reports or, you know, other regular discovery that we would
24 just get from the government automatically under Rule 16. I
25 don't know if that makes sense.

1 THE COURT: No. It does. I mean, I understand
2 your point. I guess I'm thinking through this idea and
3 whether or not -- I mean, to me, some of what has been
4 requested is -- you're operating under the premise that
5 these requests that speak to the basis for the search would
6 have been turned over in discovery. I'm not sure
7 that -- well, I'm pretty sure that the government would
8 disagree with you, but I'm also not sure that that was
9 briefed either, and it's not the -- in my mind, it was, I
10 mean, because you can ask for discovery through, in that
11 frame. I mean, you're having a hearing, but you don't have
12 to ask for other discovery, and so in my mind that was the
13 first step rather than where you were, in that you thought
14 that some of that information would be turned over prior to
15 any kind of *Franks* challenge. Do you not --

16 MS. CONNER: I mean, Your Honor, if I may. I'm
17 sorry.

18 THE COURT: Go ahead.

19 MS. CONNER: It seems like to me a lot of it would
20 be similar to the reasonable suspicion information that was
21 used to establish reasonable suspicion because, you know, a
22 lot of what's in the search warrant, you know, it's based on
23 information provided to the probation officer, if I recall.
24 And so, like, if anything is different, there are just
25 things we don't know because we don't have the documents or

1 those communications, but if there was something -- it seems
2 like it would be the same information that we would be
3 seeking for reasonable suspicion to get the very first
4 search, you know, in the very beginning anyway. So, it
5 doesn't seem to me to be different necessarily, but...

6 MR. MITCHELL: I think particularly since the
7 preliminary search of the probation officer appears to be
8 what led to the search warrant, the law enforcement search
9 warrant, so...

10 THE COURT: Right. You all, part of what you
11 requested is, for example, you know, this idea of whether
12 the probation officer was right in thinking they had
13 probable or reasonable suspicion. But isn't the Memorandum,
14 and once I have signed the Memorandum, more like a search
15 warrant? Effectively, it doesn't matter what the probation
16 officer thought because once you have a judicial officer who
17 has determined that there is reasonable suspicion, whether
18 or not probation thought they had reasonable suspicion is
19 irrelevant because you have a judicial determination that
20 there is reasonable suspicion. And then just like a search
21 warrant, if you want to try to go behind that judicial
22 determination, you have to make some showing, and so that is
23 my concern is that the -- I agree with you that there is
24 almost like -- certainly, part of this analysis would
25 involve what would the government typically turn over, and

1 then for anything in which they don't turn over, I think
2 generally you still are viewing or should view the requests
3 similar to or in the same context of rules that are already
4 established, and that's why then I looked at *Franks*.

5 You know here, I think the government has agreed or
6 not contested your requests as to categories one and eight,
7 and based upon that, I'll agree that those two categories
8 should be turned over.

9 But my concern was as to the other categories. I
10 still have that question regarding whether or not you've
11 even agreed, for example, that the *Franks* standard should
12 apply in this context, and, if so, whether you have met that
13 standard.

14 MS. CONNER: Your Honor --

15 THE COURT: Go ahead.

16 MS. CONNER: -- I think I definitely would like an
17 opportunity to research whether it applies at the discovery
18 stage. I mean, I think if I am trying to get a *Franks*
19 hearing, I definitely have to make a showing, but I don't
20 know that I have to make a showing to get discovery that
21 I -- I mean, I don't know whether I would have to be able to
22 -- at this point I don't think I have attempted to make a
23 showing about *Franks* to get a *Franks* hearing. So, I have
24 never had the issue come up where I was asked to make a
25 showing to get discovery, to get to investigate whether or

1 not there might be a potential *Franks* issue. So, I would
2 want an opportunity to research that before --

3 THE COURT: Right.

4 MS. CONNER: Yeah.

5 THE COURT: Okay. And I agree with you that, in
6 that it's not -- I don't think the answer is you get no
7 discovery unless you make a *Franks* showing. I don't think
8 that's the standard.

9 And certainly, for example, point number six, which
10 relates to the approved phone and/or phone numbers. I could
11 reasonably see that that relates to the merits of the
12 alleged supervised release violation. And it if relates to
13 the merits of the new charge or the supervised release
14 violation, you know, I think you've probably got a strong
15 basis for why that type of discovery would be turned over
16 generally, you know, in any case, in a regular case.

17 But in this context where some of the discovery
18 that you're seeking is going behind the search warrant to
19 say, what did the investigating officer do, if you think of
20 that happening in not the supervised release context but in
21 a normal kind of run-of-the-mill case, you know, typically
22 you have to think about what do you get and what is the
23 basis for why the government turns that over.

24 And so my obligation, I think, is to try to hew
25 closely to what the government -- you know, to look at the

1 discovery, the government's obligation to turn over that
2 discovery, but not just throw open the flood gates. And I
3 think it's especially important to get it right in this
4 case, one, for Mr. Keller. I mean, this is an important
5 case for him. But given the fact that this issue has not
6 arisen in this court before, I mean, certainly, I think it
7 could be used in future cases or looked to in future cases,
8 and so I would rather take the time to make sure we get it
9 right than to just say, well, yeah, give them everything
10 without considering the effects of that going forward.

11 So, I thought it would just be helpful to talk to
12 you a bit about what I thought might be helpful. I mean, I
13 know you all are limited on time and have a number of cases
14 from both sides, and so I thought it would be helpful more
15 to talk about my views at the outset so that any additional
16 briefing could be more targeted to that.

17 Also, I think kind of the second category is the
18 manner of the search and whether or not that either exceeded
19 the Court's justification of the search or was in some way
20 improper. And, again, I think it's the same, it's a similar
21 question, which is, you know, if there is a search warrant
22 executed in the new case, what types of information are
23 typically turned over and based on what, what's the
24 justification? And I think ultimately the question is one
25 of reasonableness. But to me, that's kind of a separate

1 category of requests made.

2 All right. Well, let me, just to be clear and so
3 that we can keep things moving, like I said, given the
4 agreement of the parties as to categories one and eight,
5 I'll go ahead and agree to that information and that it be
6 produced to the defense.

7 Ms. Conner, how much time would you need to file a
8 supplemental position?

9 MS. CONNER: If I could have a week, so next
10 Friday?

11 THE COURT: That's fine.

12 What I am going to do is, I'll set your deadline,
13 given the holidays, for January the 3rd.

14 And then, Ms. Yusi, would two weeks to respond be
15 adequate for you, so the 17th?

16 MS. YUSI: It would, Your Honor, thank you.

17 THE COURT: Okay. So, I think just once each would
18 be fine.

19 That's everything that I had.

20 Ms. Conner, I know that you filed a motion to
21 continue given the medical issues of Mr. Keller. Do you
22 have an update regarding that?

23 MS. CONNER: I don't know what we've learned.
24 We've learned some things since we last -- since I wrote
25 him. I think he's supposed to have an appointment with a

1 neuro trauma specialist, I think this month.

2 Is that correct, Sean? It was December?

3 MR. MITCHELL: It is, yes.

4 MS. CONNER: And as of when we met with the medical
5 staff at Chesapeake Jail, I think it was last week, they
6 still were waiting on an appointment from the neurosurgeon
7 to determine whether he needs brain surgery. So, there is
8 really no -- there has been no change. We've asked for
9 updated medical records, and we don't have them yet. So, I
10 guess I would say everything is sort of still the same, so I
11 may need to push off the -- I mean, I think the trial date
12 is fine for now, but I guess our regular motions deadline,
13 we may need that extended if we're still litigating the
14 discovery.

15 THE COURT: All right. What was the deadline that
16 I set? Do you have that in front of you?

17 MR. MITCHELL: 15 January.

18 MS. CONNER: Yes.

19 THE COURT: Okay. Given the current, what I just
20 set for briefing, I'll go ahead and just -- what's our trial
21 date? I'm sorry. I don't have that in front of me.

22 MR. MITCHELL: 29 April.

23 THE COURT: Okay. So, I'll go ahead and move your
24 motions date to February 14th.

25 MS. CONNER: Okay.

1 MR. MITCHELL: Thank you, Your Honor.

2 THE COURT: Okay. Ms. Yusi, anything, any
3 clarification you seek or anything else you think we need to
4 address?

5 MS. YUSI: Not at this point, Your Honor. I'll
6 look at the briefing and respond accordingly.

7 THE COURT: All right.
8 From defense?

9 MS. CONNER: No, Your Honor. Thank you.

10 THE COURT: All right.

11 MR. MITCHELL: No, Your Honor. Thank you.

12 THE COURT: Very well. Thank you all. I
13 appreciate your time, and I hope everyone has a nice holiday
14 if I don't see you before then.

15 MS. YUSI: Thank you very much.

16 MS. CONNER: Thank you.

17 MR. MITCHELL: Thank you.

18 (Proceedings concluded at 3:37 p.m.)

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CERTIFICATION

1
2 I certify that the foregoing is a correct transcript
3 from the record of proceedings in the above-entitled matter.
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5
6 _____/s/_____

7 Jill H. Trail

8 December 19, 2024
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JILL H. TRAIL, Official Court Reporter